



STATE OF NEW JERSEY

Board of Public Utilities

Two Gateway Center

Newark, NJ 07102

www.bpu.state.nj.us

TELECOMMUNICATIONS

IN THE MATTER OF THE JOINT APPLICATION)
OF SMOKE SIGNAL COMMUNICATIONS AND)
UNITED TELEPHONE COMPANY OF NEW)
JERSEY, INC. FOR APPROVAL OF A)
MASTER RESALE AGREEMENT UNDER)
SECTION 252 OF THE TELECOMMUNICATIONS)
ACT OF 1996)

ORDER APPROVING RESALE AGREEMENT

DOCKET NO. TM00120936

(SERVICE LIST ATTACHED)

BY THE BOARD:

By letter dated December 4, 2000, United Telephone Company of New Jersey, Inc. ("United"), a New Jersey corporation, and Smoke Signal Communications ("Smoke Signal"), a Florida corporation, (jointly, "the Parties"), pursuant to Sections 251 and 252 of the Telecommunications Act of 1996, P.L. 104-104, 110 Stat. 56 (codified in scattered sections of 47 U.S.C. §151 et seq.) ("the Act"), submitted to the Board of Public Utilities ("Board") a joint application ("Application") for approval of a negotiated resale agreement, titled "Master Resale Agreement for the State of New Jersey" and dated September 1, 1999 ("the Agreement"). United is an incumbent local exchange carrier as defined by the Act with the duty to negotiate interconnection agreements pursuant to Section 252 of the Act. See 47 U.S.C. §251(c) and §251(h)(1). The Agreement sets forth the rates, terms and conditions under which United will offer to Smoke Signal telecommunications services for the purpose of resale.

United and Smoke Signal assert that the Agreement satisfies the requirements for Board approval because it does not discriminate against any other telecommunications carrier, as required by Section 252(e)(2)(A)(i). The Parties aver that the terms contained in the Agreement are available to any other telecommunications carrier operating in New Jersey, and that other carriers are not bound by the Agreement, remaining free to negotiate independently with United pursuant to Section 252 of the Act. Application at 3.

The Agreement was in effect until September 1, 2001 and thereafter, as noted in the Agreement, continues in full force and effect unless terminated as provided in the Agreement. The Agreement provides for post termination interim services arrangements.

The Parties also assert that the Agreement is consistent with the public interest, convenience and necessity, as required by Section 252(e)(2)(A)(ii) because it will permit Smoke Signal to compete with United as a local telephone service reseller for both residential and business customers, and it will promote local competition in United's service territory, thereby fostering the goals of the Act.

The Division of the Ratepayer Advocate (Advocate) has raised objections to certain provisions of the Agreement. Consistent with prior Board Orders, the Board declines to make modifications to the Agreement. See Order, I/M/O the Joint Application of Verizon New Jersey, Inc. and Ernest Communications, Inc. For Approval of an Interconnection Agreement Under Section 252(e) of the Telecommunications Act of 1996, Docket No. TO02050287, dated September 18, 2002.

DISCUSSION

Pursuant to 47 U.S.C. §252(a)(1), an incumbent LEC may negotiate and enter into a binding interconnection agreement with a carrier requesting interconnection, service, or network elements without regard to the standards set forth in 47 U.S.C. §251(b) and (c). In addition, 47 U.S.C. §252(e)(1) requires approval by the Board of any interconnection agreement adopted by negotiation or arbitration, and further requires the Board to approve or reject the Agreement, with written findings as to any deficiencies. The Act provides that the Board may reject a negotiated agreement only if it finds that:

- (i) the agreement (or portion thereof) discriminates against a telecommunications carrier not a party to the agreement; or
- (ii) the implementation of such agreement or portion is not consistent with the public interest, convenience, and necessity.

[47 U.S.C. §252(e)(2)(A)].

The Board's review of the Agreement and the record in this matter indicate that the Agreement is consistent with the public interest, convenience, and necessity and does not discriminate against telecommunications carriers not parties to the Agreement. Therefore, the Board FINDS that the Agreement meets the standards set forth in the Act, and HEREBY APPROVES the Agreement as presented by the Parties. This approval should not be construed as preapproval of any future petitions for rate recovery of costs incurred pursuant to the Agreement. In addition, approval does not constitute a determination concerning, nor shall the Board be bound by, any provisions within the Agreement regarding the confidentiality of information.

Pursuant to 47 U.S.C. §252(h), a copy of the Agreement will be made available for public inspection and copying within ten days of the issuance of this Order.

DATED: 3/3/04

BOARD OF PUBLIC UTILITIES
BY:

signed
JEANNE M. FOX
PRESIDENT

signed
FREDERICK F. BUTLER
COMMISSIONER

signed
CAROL J. MURPHY
COMMISSIONER

signed
CONNIE O. HUGHES
COMMISSIONER

signed
JACK ALTER
COMMISSIONER

ATTEST:

signed

KRISTI IZZO
SECRETARY